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U.S. FOODSERVICE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PIROOZ HAGHIGHI, an individual,

Plaintiff,

vs.

U.S. FOODSERVICE, INC.; and DOES 1–10,
inclusive.

Defendants.

Case No. C 07-02946 MEJ

**ANSWER BY DEFENDANT U.S.
FOODSERVICE, INC.**

1 Defendant U.S. Foodservice, Inc. ("Defendant"), answers Plaintiff's Complaint as
2 follows:

3 **FIRST CAUSE OF ACTION**

4 1. Answering paragraph 1 of the Complaint, Defendant admits that Plaintiffs purport
5 to be unaware of the names or capacities of Defendants sued under fictitious names Does 1-10.
6 Defendant lacks sufficient information and belief as to the identity and capacity of the Doe
7 Defendants, and on that basis denies each and every remaining allegation contained in said
8 paragraph.

9 2. Answering paragraph 2 of the Complaint, Defendant denies each and every
10 allegation contained in said paragraph.

11 3. Answering paragraph 3 of the Complaint, Defendant admits that Plaintiff was
12 employed by Defendant. Defendant denies that Plaintiff's employment was pursuant to a written
13 employment contract, and avers that the letter attached as Exhibit A to the Complaint speaks for
14 itself. Defendant denies each and every remaining allegation contained in said paragraph.

15 4. Answering paragraph 4 of the Complaint, Defendant admits the allegations
16 contained in said paragraph.

17 5. Answering paragraph 5 of the Complaint, Defendant denies each and every
18 allegation contained in said paragraph.

19 6. Answering paragraph 6 of the Complaint, Defendant denies each and every
20 allegation contained in said paragraph.

21 7. Answering paragraph 7 of the Complaint, Defendant denies each and every
22 allegation contained in said paragraph.

23 8. Answering paragraph 8 of the Complaint, Defendant admits that Plaintiff's
24 employment was terminated, but denies that the date of such termination was September 19,
25 2006. Defendant denies each and every remaining allegation contained in said paragraph.

26 9. Answering paragraph 9 of the Complaint, Defendant denies each and every
27 allegation contained in said paragraph.
28

SECOND CAUSE OF ACTION

10. Answering paragraph 10 of the Complaint, Defendant incorporates by reference its answers to the whole of Plaintiff's first cause of action.

11. Answering paragraph 11 of the Complaint, Defendant admits that Paul DeMarco is a District Sales Manager for Defendant. Defendant denies each and every remaining allegation contained in said paragraph.

12. Answering paragraph 12 of the Complaint, Defendant denies each and every allegation contained in said paragraph.

13. Answering paragraph 13 of the Complaint, Defendant denies each and every allegation contained in said paragraph.

14. Answering paragraph 14 of the Complaint, Defendant denies each and every allegation contained in said paragraph.

15. Answering paragraph 15 of the Complaint, Defendant denies each and every allegation contained in said paragraph.

16. Answering paragraph 16 of the Complaint, Defendant denies each and every allegation contained in said paragraph.

17. Answering paragraph 17 of the Complaint, Defendant denies each and every allegation contained in said paragraph.

ADDITIONAL DEFENSES

Defendant asserts the following additional defenses to the Complaint. These additional defenses are applicable to all causes of action unless otherwise specified.

FIRST ADDITIONAL DEFENSE

The Complaint, and each and every cause of action contained therein, fails to state a claim upon which relief can be granted.

SECOND ADDITIONAL DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations, including but not limited to California Code of Civil Procedure sections 337, 338, and 339.

1 **THIRD ADDITIONAL DEFENSE**

2 Plaintiff's claims are barred, in whole or in part, because Plaintiff was an at-will
3 employee, and therefore Plaintiff's employment could be terminated at any time.

4 **FOURTH ADDITIONAL DEFENSE**

5 Plaintiff's claims are barred, in whole or in part, because even if Plaintiff's employment
6 was for a specified term, Defendant had the right to terminate Plaintiff's employment pursuant to
7 California Labor Code section 2924 because of Plaintiff's willful breach of duty, habitual neglect
8 of his duty as an employee, or continued incapacity to perform his duty as an employee.

9 **FIFTH ADDITIONAL DEFENSE**

10 Plaintiff's claims are barred, in whole or in part, because the agreements, representations
11 or contracts alleged in the Complaint, to the extent any were made, were not made by a person
12 with authority to act on Defendant's behalf with respect to any such agreement, representation or
13 contract.

14 **SIXTH ADDITIONAL DEFENSE**

15 Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to perform his
16 duties or obligations arising out of any and all agreements, representations or contracts alleged in
17 the Complaint, to the extent any such agreements, representations or contracts were made.

18 **SEVENTH ADDITIONAL DEFENSE**

19 Plaintiff's claims are barred, in whole or in part, because Defendant duly performed,
20 satisfied and discharged all duties and obligations that it may have owed to Plaintiff arising out
21 of any and all agreements, representations or contracts alleged in the Complaint, to the extent
22 any such agreements, representations or contracts were made.

23 **EIGHTH ADDITIONAL DEFENSE**

24 Plaintiff's claims are barred, in whole or in part, because Defendant did not make any
25 fraudulent misrepresentations or omissions to Plaintiff.

26 **NINTH ADDITIONAL DEFENSE**

27 Plaintiff's claims are barred, in whole or in part, by Plaintiff's own negligence in
28 connection with the matters alleged in the Complaint.

TENTH ADDITIONAL DEFENSE

Plaintiff's claims are barred, in whole or in part, by Plaintiff's lack of justifiable reliance on the purported misrepresentations alleged in the Complaint.

ELEVENTH ADDITIONAL DEFENSE

Plaintiff, has failed, and continues to fail, to reasonably mitigate, minimize, or avoid any damages he has allegedly sustained, and recovery against Defendant, if any, must be reduced accordingly.

TWELFTH ADDITIONAL DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

THIRTEENTH ADDITIONAL DEFENSE

Plaintiff's claims are barred, in whole or in part, because Plaintiff consented to and/or approved of Defendant's alleged conduct, statements, and/or omissions.

FOURTEENTH ADDITIONAL DEFENSE

Plaintiff's claims are barred, in whole or in part, because all of the alleged acts were privileged and/or justified.

FIFTEENTH ADDITIONAL DEFENSE

Plaintiff's claims are barred, in whole or in part, because Defendant's conduct and activities as alleged in the Complaint and any alleged violation of law, if it occurred, was non-willful and unintentional.

SIXTEENTH ADDITIONAL DEFENSE

To the extent Defendant is liable, if at all, for the claims of Plaintiff, the fact and extent of which Defendant denies, Defendant is entitled to indemnification, contribution, and/or equitable apportionment for such claims among all other parties, individuals or other entities responsible for those claims.

SEVENTEENTH ADDITIONAL DEFENSE

Any damage sustained by Plaintiff, the fact and extent of which is expressly denied, was either wholly or in part proximately caused by and/or contributed to by the fault of others, whether that fault be the proximate result of intentional conduct, negligence, breach of contract,

1 or any other type of fault, of persons, firms, corporations, or entities other than Defendant, for
2 which Defendant is not responsible. Said intentional conduct, negligence, or fault bars recovery
3 against Defendant or comparatively reduces the percentage of fault or negligence, if any, of
4 Defendant.

5 **EIGHTEENTH ADDITIONAL DEFENSE**

6 The Complaint, and each and every cause of action contained therein, does not state facts
7 sufficient to form a basis for obtaining punitive damages.

8 **NINETEENTH ADDITIONAL DEFENSE**

9 Plaintiff is barred from obtaining punitive damages because such punitive damages
10 would violate Defendant's rights under the United States and California Constitutions.

11 **TWENTIETH ADDITIONAL DEFENSE**

12 Plaintiff is barred from obtaining punitive damages because Paul DeMarco is not an
13 officer, director, or managing agent of the Defendant within the meaning of Civil Code section
14 3294, and punitive damages are not otherwise available against the defendant pursuant to Civil
15 Code section 3294(b).

16 **RESERVATION OF RIGHT**

17 Defendant is presently without knowledge or information sufficient to form a belief as to
18 whether it has additional defenses. Accordingly, Defendant reserves the right to assert additional
19 defenses if Defendant becomes aware of the existence of additional defenses during discovery.
20

21 WHEREFORE, Defendant denies that Plaintiff is entitled to any of the relief sought in
22 the Complaint, and further prays for judgment against Plaintiff as follows:

- 23 1. That Plaintiff take nothing by his Complaint.
24 2. For dismissal with prejudice of the Complaint
25 3. That Defendant be awarded its costs in this action, including reasonable attorneys'
26 fees.
27
28

4. For such other and further relief as the Court deems just and proper.

DATED: June 13, 2007

KERR & WAGSTAFFE LLP

By s/
ADRIAN J. SAWYER
Attorneys for Defendant
U.S. FOODSERVICE, INC.